KCSB KONSORTIUM SDN BHD v. PENTADBIR TANAH JOHOR BAHRU & ANOR AND OTHER CASES

HIGH COURT MALAYA, JOHOR BAHRU
CHOO KAH SING J
[LAND REFERENCE NO: JA-15-94-04-2017, JA-15-102-04-2017 & JA-15-96-04-2017]
8 AUGUST 2019

LAND LAW: *Acquisition of land – Award – Reference – Dissatisfaction over awards by Land Administrator – Awards omitted to state apportionment/entitlement of compensation awards for each individual party named in Forms G and H – Matter referred to High Court – Whether High Court seized with jurisdiction to hear matter when award did not state apportionment for compensation awarded to parties named in Forms G and H – Whether High Court could invoke jurisdiction under s. 44 of Specific Relief Act 1950 – Land Acquisition Act 1960, ss. 3(1) & 38*

The applicant, Konsortium Sdn Bhd ('KCSB'), was the registered proprietor of two pieces of land, Lots 139 and 1876 ('scheduled lands'), which were compulsorily acquired pursuant to s. 3(1) of the Land Acquisition Act 1960 ('Act'). Following an enquiry, the Land Administrator ('LA') awarded RM75 million for Lot 139 and RM253,750 million for Lot 1876. Dissatisfied with the awards, KCSB objected to the same and proceeded to file two Forms N to the LA, requiring the LA to refer the matter to the present High Court for determination. This resulted in two land references, LR-94 and LR-102. Johor Corporation ('JC'), the paymaster and the party for whom the lands were acquired, was also dissatisfied and objected to the awards *via* LR-96. KCSB was made an intervener in LR-96 while JC was made the second respondent in the proceedings concerning LR-94 and LR-102. During the hearing of LR-94, LR-102 and LR-96, the assessors informed the court that the awards omitted to state the apportionment or the entitlement of the compensation awards for each individual party who was named in Forms G and H in both proceedings for LR-94 and LR-102. Other than KCSB, there were many other parties *ie*, chargees, caveators and tenants, named in Form G for both Lots 139 and 1876. There were, in total, 31 tenants named in Form G for Lot 1876 and they have individually filed Form N objecting to the awards. The 27th tenants urged the court to invoke s. 44 of the Specific Relief Act 1950 ('SRA') to exercise the court's jurisdiction. In her explanation as to why she omitted the apportionment of the parties' entitlement in the awards, the LA submitted that (i) there was a dispute over the category of land use in the scheduled lands. Those persons who claimed for the costs of the buildings in Lot 1876 would not be entitled to such costs in the event the category of land use is agriculture land. She was not in the position to determine the category of land use of the scheduled lands; and (ii) at the time of the enquiry, there was an unresolved dispute pending in court between one of the chargees and KCSB over the legal issues

of the charges on the scheduled lands. The question of law that arose for determination was whether the court was seized with the jurisdiction to inquire into Forms H and N, filed under s. 38 of the Act, objecting to the LA's award that did not state any apportionment for the compensation awarded by the LA to the parties named in Form G and H.

Held (striking out application):

(1) The LA's failure to state the apportionment in the awards could not be overcome or rectified by the court because the reference proceedings based on such a defective award could not confer the court with jurisdiction. The High Court's jurisdiction is confined to the 'terms of reference' in a land reference proceeding. A land reference court does not exercise the role of an appellate court, neither does it exercise a supervisory role, such as in a judicial review case. Those powers vested in the High Court, pursuant to s. 44 of the SRA, do not apply in a land reference proceeding. (paras 32 & 33)

(2) In a land reference proceeding, a High Court Judge, assisted by two assessors, is to determine only the terms of reference which are in regard to whether the interested person has been adequately compensated. A land reference is not about a wrong that has been committed against the applicant or the remedy that avails to the applicant. In the event there is any breach in the due process during the enquiry, or non-compliance of the procedural law of acquisition, the correct action to be taken is to challenge the award by seeking a judicial review against an administrative decision. In such circumstances, the remedy in s. 44 of the SRA could avail to the claimant, but not to an applicant in a land reference proceeding. (para 37)

(3) The court and the assessors can only carry out their duties in a land reference proceeding where there is an amount which has been determined by the LA to enable the court and the assessors to decide whether the amount awarded is or is not adequate compensation. The amount of the compensation award decided by the LA shall be the reference point for the High Court to determine whether the applicant has been overcompensated, adequately compensated or inadequately compensated. A land reference court is not a court of first instance to determine a compensation amount or apportionment for the first time. There must first be a compensation amount which has been determined by the LA, only then can a reference be made to the High Court for determination. (paras 44 & 45)

(4) The three land reference proceedings, namely, LR-94, LR-102 and LR-96, together with the 28 others land reference proceedings which were filed objecting to the same impugned awards, were struck out for want of jurisdiction of this court. (para 63)

Case(s) referred to:

Chung Khiaw Bank Ltd v. The Government of the State of Sabah & Ors [1994] 2 CLJ 475 SC ***(refd)***

Land Acquisition Collector v. Gajpal Singh LNIND [1980] Del 196 ***(refd)***

M Siddiqi & Others v. Kolkata Metropolitan Development Authority & Others LNIND [2014] Cal 2283 ***(refd)***

Petroleum Nasional Bhd v. Pentadbir Tanah Daerah Kota Tinggi; Koo Ming Kuang & Anor [2017] 1 LNS 325 HC ***(refd)***

Rabindra Kumar Babu v. SK Banerjee LNIND [1959] Cal 119 ***(refd)***

Re Land Acquisition Act, Government v. Nanu Kothare & Ors LLR [1906] Bom 275 ***(refd)***

Semantan Estate (1952) Ltd v. Collector of Land Revenue [1960] 1 LNS 124 HC ***(refd)***

State of West Bengal v. Asiatic Investment Limited LNIND [2009] Cal 561 ***(refd)***

Legislation referred to:

Courts of Judicature Act 1964, s. 23(2)

Federal Constitution, art. 13(1), (2)

Land Acquisition Act 1960, ss. 2, 3(1)(c), 10, 11, 12, 13, 14(1), (2), 15, 29(1)(c), (2), 36(2)(a), (b), (c), (d), (e), (f), 37(1)(a), (b), (c), (d), 38(1), (5), (7), 40D(3), 44, 47(3), 49(1)

Specific Relief Act 1950, s. 44

For KCSB - Raymond Mah, Denise Phang & Eric Toh; M/s Mah Weng Kwai

For the Land Administrator - Suhana Sabil; State Legal Advisor, Johor

For Johor Corporation - Vijay Raj & Tan Hui Wen; M/s Skrine

For The Store (JA-15-174-07-2017) - Izzat Zamri; M/s Tan Norizan & Assocs

For JA-15-97-04-2017, JA-15-99-04-2017 & JA-15-100-04-2017 - T Gan; M/s Gan & Lim

For MINDEF- Rusita MD Lazim

For LR (JA-15-98-2017 & JA-101-04-2017) - Hamidah Arshadi; M/s Hasnal & Partners

For MBSB - K Gobinath; M/s Sanjay Mohan

For the rest of tenants - Muhammad Fahmi A Jamil; M/s Sharifuddin & Co

Reported by Najib Tamby

JUDGMENT

Choo Kah Sing J:

Introduction

[1] These are the grounds of decision of this court in respect of a point of law raised in a joint hearing of three land reference proceedings on 22 May 2019, namely, JA-15-94-04-2017 (hereafter 'LR-94'), JA-15-102-04-2017 (hereafter 'LR-102') and JA-15-96-04-2017 (hereafter 'LR-96').

[2] The question of law raised by this court is as follows:

> Whether the Court has the jurisdiction to inquire into the Form H and Form N filed under s. 38 of the Act objecting to the Land Administrator's award dated 3.11.2016 that does not state any apportionment for the compensation awarded by the Land Administrator to the parties named in Form G and Form H?

A **Background Facts**

[3] KCSB Konsortium Sdn Bhd (hereafter 'KCSB') is the registered proprietor of two pieces of land, namely, Lot 139, Hakmilik No. PN 10081, Mukim Tebrau, Daerah Johor Bahru, Negeri Johor (hereafter 'Lot 139') and Lot 1876, Hakmilik No. PN 11044, Mukim Plentong, Daerah Johor Bahru, Negeri Johor (hereafter 'Lot 1876') (Lot 139 and Lot 1876 shall together be referred to as the scheduled lands).

[4] The scheduled lands were compulsory acquired pursuant to s. 3(1)(c) of the Land Acquisition Act 1960 (hereafter 'the Act'). An enquiry was held on 3 November 2016 by the Land Administrator for the scheduled lands pursuant to s. 12 of the Act.

[5] At the end of the enquiry, the Land Administrator made two awards of compensation, ie, the Forms G (hereafter 'the impugned awards') in respect of the scheduled lands respectively as below:

Lot	Compensation Amount
139	RM75,000,000.00
1876	RM253,750,000.00

Table A

[6] Dissatisfied with the impugned awards, KCSB filed two Form N to the Land Administrator requiring the Land Administrator to refer the matter to the court for its determination. KCSB made four objections to the impugned awards pursuant to s. 37(1)(a), (b), (c) and (d) of the Act. The Land Administrator then referred the objections to the court. The land reference proceedings are as below:

Lot	Compensation Amount	Land Reference
139	RM75,000,000.00	LR-94
1876	RM253,750,000.00	LR-102

Table B

[7] Johor Corporation (hereafter 'JC') is the party for whom the lands were acquired, also known as the paymaster. JC was also not satisfied with the Land Administrator's awards and filed one Form N objecting to the compensation amounts of the impugned awards via LR-96. KCSB intervened into LR-96 as an intervener. JC intervened in both the proceedings LR-94 and LR-102 and was made the second respondent in the proceedings.

[8] During the hearing of LR-94, LR-102 and LR-96, the assessors informed the court that the impugned awards have omitted to state the apportionment or the entitlement of the compensation awards for each individual party who was named in Forms G as well as in Forms H in both the proceedings LR-94 and LR-102.

[9] Other than KCSB, there are many other parties named in the Forms G for both Lot 139 (LR-94) and Lot 1876 (LR-102); the parties are chargee, caveators, and tenants. There are in total 31 tenants named in Form G for Lot 1876 (in LR-102). Those parties who are affected by the acquisitions of Lot 139 and Lot 1876 have individually filed Form N objecting to the impugned awards.

[10] The tables below depict the parties who are affected by the acquisitions, their respective interests, their respective land reference proceeding numbers and their respective firms of solicitors representing them.

Lot 139

	Party	Interest	Land Reference number	Firm of solicitors
1	KCSB	Land Owner	LR-94	Tetuan Mah Weng Kwai & Associates
2	Malaysia Building Sdn Bhd (hereafter MBSB)	Chargee and caveator	15-95-04/2017 [Note: MBSB filed only one Form N objecting both the impugned awards, instead of filing two Forms N for each award.	Tetuan Sanjay Mohan
3	Kementerian Pertahanan Malaysia (MINDEF)	Caveator *via* a registrar caveat	15-180-12/2017	MINDEF's counsel
4	PETRONAS DAGANGAN BERHAD	Caveator	Did not file Form N	
5	Baharin bin Ayob	Caveator	15-101-04/2017	Tetuan Hasnal & Partners

Table C

Lot 1876

	Party	Interest	Land Reference number	Firm of solicitors
1	KCSB	Land Owner	LR102	Tetuan Mah Weng Kwai & Associates
2	MBSB	Chargee	15-95-04/2017 [same as Lot 139]	Tetuan Sanjay Mohan
3	MINDEF	Via registrar caveat	15-179-07/2017	MINDEF's counsel
4	Baharin Bin Ayob	Caveator	15-98-04-2017	Tetuan Hasnal & Partners
5	The Store (M) S/B	Tenant	15-174-07/2017	Tetuan Tan Norizan & Associates
6	Car Rider S/B	Tenant	15-97-04/2017	Tetuan Gan & Lim
7	Takisina Auto S/B	Tenant	15-99-04/2017	
8	Takisina Motor S/B	Tenant	15-100-04/2017	
9	Southern Motor Enterprise	Tenant	15-9-07/2018	Tetuan Sharifuddin & Co
10	Ichima S/B	Tenant	15-10-07/2018	
11	OG Motor S/B	Tenant	15-25-08/2018	
12	Top Well Motor S/B	Tenant	15-26-08/2018	
13	Arashi Aerodynamic	Tenant	15-27-08/2018	
14	V2 Auto S/B	Tenant	15-28-08/2018	
15	UV Auto S/B	Tenant	15-29-08/2018	
16	CTC Auto S/B	Tenant	15-30-08/2018	
17	G2 Motor S/B	Tenant	15-31-08/2018	
18	Perniagaan Motor Hong Fong	Tenant	15-32-08/2018	
19	MK Garden Steamboat	Tenant	15-33-08/2018	
20	MS Motor Zone S/B	Tenant	15-34-08/2018	
21	SMC Autorich S/B	Tenant	15-36-10/2018	
22	ZH Automobile Enterprise	Tenant	15-38-10/2018	

23	Yap Auto Trading	Tenant	15-39-10/2018	
24	Skyway Automobile S/B	Tenant	15-40-10/2018	
25	Skyway Autoworld S/B	Tenant	15-41-10/2018	
26	Perniagaan Norhazri	Tenant	15-42-10/2018	
27	JB I Auto	Tenant	15-43-10/2018	
28	Airadamas Auto	Tenant	Did not file Form N	NA
29	Blue Star Motor	Tenant	Did not file Form N	NA
30	Garden Steamboat	Tenant	Did not file Form N	NA
31	LL Hong Auto Enterprise	Tenant	Did not file Form N	NA
32	Mega Auto World Enterprise	Tenant	Did not file Form N	NA
33	Redda Motor Trading	Tenant	Did not file Form N	NA
34	T/A Sin Whey Motor Trading	Tenant	Did not file Form N	NA
35	Yong Soon Workshop (M) S/B	Tenant	Did not file Form N	NA

Table D

[Note: Eight tenants did not file Form N in Lot 1876 – Nos. 28 to 35]

[11] The upshot of the decision on the point of law has an overarching effect. The decision will bind and affect a total of 28 impending land reference proceedings in this court as shown in the above tables, in addition to the three land reference proceedings before this court - LR-94, LR-102 and LR-96. All the firms of solicitors on record who are involved in the 28 land reference proceedings were also invited to submit their respective written submissions and submissions-in-reply in regard to the question of law raised by this court.

Reasons For The Decision Of This Court

The Jurisprudence

[12] Section 23(2) of the Courts of Judicature Act 1964 states: 'Without prejudice to the generality of sub-s. (1), the High Court shall have such jurisdiction as was vested in it immediately prior to Malaysia Day and such

other jurisdiction as may be vested in it by any written law in force within its local jurisdiction.' The written law which is in force which accords the High Court the jurisdiction to hear references from a Land Administrator is the Act. Section 2 of the Act defines 'court' as the High Court. Part V of the Act sets out the entire procedural law as to how a reference can be made to a High Court, and how it should be conducted, including the composition of the court. It also sets out the 'terms of reference' that can be referred to the High Court.

[13] Article 13(1) of the Federal Constitution guarantees 'no person shall be deprived of property save in accordance with law '. Hence, Parts II, III and IV of the Act are the laws which set out the procedures where a person can be deprived of ownership in property in accordance with law. A slightest non-compliance of the procedural law could result a land acquisition being questioned. A person's right to property is a fundamental right embedded in the Federal Constitution by the founding fathers of this nation. No law or institution can remove such right. Such right is part of our basic structure of the Federal Constitution.

[14] The Federal Constitution also provides a fundamental right for an individual to expect an adequate compensation for his property acquired in accordance with law. Article 13(2) of the Federal Constitution states:

> (2) No law shall provide for the compulsory acquisition or use of property without adequate compensation.

[15] The process and procedural law for the determination of the compensation are provided from ss. 10 to 15 of the Act. The Land Administrator is empowered under the Act to decide and determine the measurement of the land so acquired, the value of the land so acquired or the value of the property so affected, ie, the compensation amount, the persons to whom the compensation amount to be paid to and to determine the apportionment of the compensation award. The Land Administrator's award shall be final and conclusive evidence of the area of any scheduled land, of its value and of the apportionment of the compensation awarded by the Land Administrator. The relevant parts of s. 14 of the Act state as follows:

> (1) Upon the conclusion of the enquiry under section 12 relating to any scheduled land the Land Administrator shall prepare a written award in Form G, in which he shall, in respect of each separate area of scheduled land, **make a separate award in respect of each person whose interest in the land has been established in such enquiry**.
>
> (2) Every award prepared under subsection (1) shall be filed in the office of the Land Administrator and **shall be final and conclusive evidence** of **the area** of any scheduled land, of **its value** in the opinion of the Land Administrator, and of **the apportionment** of the compensation awarded by the Land Administrator, whether the persons interested therein have or have not appeared at the enquiry.

(3) ....

(4) ....

(5) ...

(emphasis added)

[16] The statement "... make a separate award in respect of each person whose interest in the land has been established in such enquiry" in s. 14(1) of the Act manifests two important tasks which the Land Administrator is required to do at the end of an enquiry. Firstly, the Land Administrator must establish each person's interest in the land. Secondly, the Land Administrator must make a separate award in respect of each person's interest. The latter requirement simply means to separate the compensation award in respect of each person's interest if more than one person's interest has been established. In other words, to apportion the compensation award if more than one person's interest has been established during the enquiry. Section 14(2) of the Act provides for the findings of the Land Administrator to be final and conclusive evidence of the area of the scheduled land, the compensation value and the apportionment of the parties, if more than one person's interest has been established.

[17] The Land Administrator is not only acting as an arbiter to determine the compensation value of the person's property being deprived under the Act; the Land Administrator is, in fact and in law, also carrying out a constitutional duty and responsibility to ensure adequate compensation is administered as it is guaranteed under the Federal Constitution.

[18] The court being the last bastion to protect and safeguard the rights of the people is vested with the power to scrutinise the decision of the Land Administrator. The Land Administrator is the only party that can refer a matter to the court in accordance with Part V of the Act. As explained earlier, a person has a fundamental right to expect an adequate compensation as guaranteed under the Federal Constitution. That expectation has been embodied into law in the Act. The person concerned can compel the Land Administrator to refer his decision to the court for scrutiny. As such, the purpose of a land reference proceeding is to allow the High Court to scrutinise the Land Administrator's award as to whether the award has adequately compensated a person whose property has been acquired.

The Present Land Reference Proceedings

[19] The applicants in the present land references (including the 28 other land reference proceedings) have filed Forms N pursuant to s. 38(1) of the Act raising various objections in accordance with s. 37(1) of the Act. The main complaints are the inadequate compensation award and the absence of apportionment of the compensation.

[20] The Form G for Lot 139 (LR-94) dated 3 November 2016 named five parties. The Land Administrator identified the respective parties' interests (see Table C above). The Land Administrator awarded RM75,000,000 as the compensation award, but failed to apportion the entitlement for each party's compensation amount.

[21] The Form G for Lot 1876 (LR-102) dated 3 November 2016 named 35 parties. The Land Administrator identified the respective parties' interest (see Table D above). The Land Administrator awarded RM253,750,000 as the compensation award, but again failed to apportion the entitlement for each party's compensation amount.

[22] As a result of the failure to apportion the parties' entitlement in the Forms G, the assessors voiced their concerns to this court and stated as follows:

> Semakan kami ke atas bundle tersebut khususnya Borang G dan H bertarikh masing-masing pada 3.11.2016 mendapati:
>
> 1. Kedua-dua borang tidak menyatakan bahagian pemberian kepada setiap orang yang berkepentingan termasuk penyewa-penyewa di dalam borang-borang tersebut.
> 2. Jumlah pampasan yang dinyatakan di dalam kedua-dua borang tersebut adalah satu amaun lump sum. Peratusan juga adalah (75% dan 125%) tidak jelas diambil daripada sumber amaun mana.
> 3. Borang G dan H juga tidak mencatatkan amaun yang perlu dibayar pada pemiutang MBSB daripada jumlah amaun award tersebut.
> 4. Nota perbicaraan Pentadbir Tanah Daerah Johor Bahru yang bertarikh 3.11.2016 juga dilihat tidak mencatatkan pembahagian orang-orang berkepentingan dan juga penyewa-penyewa. Ianya hanya mencatat jumlah amaun award yang didepositkan ke Mahkamah Tinggi Johor Bahru dan jumlah tuntutan orang berkepentingan sahaja.
>
> Dari rumusan di atas, kami mendapati Pentadbir Tanah Daerah Johor Bahru telah gagal mematuhi Seksyen 14(1) dan (2), Akta Pengambilan Tanah 1960 (Pindaan) yang memperuntukan agar award yang berasingan diberikan kepada tiap-tiap orang yang berkepentingan di dalam Borang tersebut. Ini kerana award Pentadbir Tanah Daerah Johor Bahru hendaklah menjadi keterangan yang akhir dan konklusif mengenai pembahagian amaun pampasan kepada setiap orang yang berkepentingan.
>
> Oleh yang demikian, kami berpendapat bahawa tanpa Borang G dan H yang lengkap (mematuhi kehendak Seksyen 14(1) dan (2) akan menyebabkan kami tidak dapat memberi pandangan dan nasihat yang konklusif kepada Yang Arif Hakim.

[23] In view of the assessors' concern and in view that the matter raised by the assessors may affect the power and jurisdiction of this court to hear the land reference proceedings, this court framed the question of law.

[24] Counsel for JC submits that 'the finality and conclusiveness of an award prescribed by s. 14(2) LAA is only effectual until or unless the award is escalated to the land reference court pursuant to the provisions of the LAA, as otherwise s. 14(2) LAA would be in conflict with the scheme of the LAA and essential provisions such as s. 37 and 47 LAA.' This court could not agree with the submission. The award of the Land Administrator shall be final and conclusive evidence of the area of any scheduled land, or its value in the opinion of the Land Administrator, and of the apportionment of the compensation awarded by the Land Administrator. This legal position is explicitly laid down by the Legislature to clothe the Land Administrator with the power to decide on the measurement, compensation award and apportionment of the award if necessary under s. 14(2) of the Act. The mere fact that an interested person may object to the award pursuant to s. 37(1) of the Act, regardless of the heads of objection, would not make the Land Administrator's award less conclusive or ineffectual.

[25] An interested person can only come to the court to object to the Land Administrator's award after the procedural law in s. 14(1) and/or (2) of the Act has been fulfilled. The procedural law requires the Land Administrator to prepare a written award in Form G, and if necessary make a separate award in respect of each person whose interest in the land has been established. In order to establish each person's interest in the land, the Land Administrator must give equal opportunity to all the parties who are present in the enquiry to state their interest. In the present case, those representatives of the applicants represented by Tetuan Gan & Lim (see Table D – Nos. 6, 7 and 8) and the representatives of The Store represented by Tetuan Tan Norizan & Associates (see Table D – No. 5) were present, but they were not given an opportunity to state their case in the enquiry.

[26] The Form N in s. 38(1) of the Act is the catalyst to move the High Court to scrutinise the Land Administrator's award. The objection(s) raised in Form N is anchored on Form G and Form H issued by the Land Administrator. In the event the procedure culminating in the Form G and Form H by the Land Administrator is defective, the subsequent Form N filed by any party relying on the defective Form G shall fail for want of jurisdiction and be invalid. The High Court in hearing a land reference proceeding is not omnipotent in its jurisdiction and powers. The jurisdiction can only be established with a proper reference being made through a valid Form N which relies on a valid Form G and Form H. That jurisdiction is a limited one because the power to scrutinise the Land Administrator's award is confined to the terms of reference by law which are: (i) the measurement of the land; (ii) the amount of the compensation; (iii) the persons to whom it is payable; and lastly (iv) the apportionment of the compensation (see s. 37(1) of the Act).

[27] In the event the Form N is filed by the owner of the property who is not satisfied with the amount of compensation, then the power to scrutinise the award is confined to only whether the award was inadequately compensated. Likewise, if the Form N is filed by the paymaster who is not satisfied with the amount of compensation, then the power to scrutinise the award is confined to only whether the award was overcompensated (see *Petroleum Nasional Berhad v. Pentadbir Tanah Daerah Kota Tinggi; Koo Ming Kuang & Anor* [2017] 1 LNS 325; [2017] 4 AMR 270). Hence, a Form N sets out the 'terms of reference' of the court which in turn draws upon the jurisdiction of the court to examine the applicant's objection raised. That jurisdiction of the court could only arise if the Form N is a valid one objecting to a valid Form G.

[28] A Form N stemming from a defective Form G cannot give rise to the High Court's jurisdiction to hear the land reference proceeding. In *Re Land Acquisition Act, Government v. Nanu Kothare & Ors* LLR [1906] Bom 275, 285, Chandravarkar J held:

> These are the conditions prescribed by the Act for the right of the party to a reference by the Collector to come into existence. They are the conditions to which the power of the Collector to make the reference is subject. They are also the conditions which must be fulfilled before the court can have jurisdiction to entertain the reference.

[29] The above legal proposition was adopted and followed in our court in *Semantan Estate (1952) Ltd v. Collector of Land Revenue* [1960] 1 LNS 124; [1960] 26 MLJ 300, at p. 301, wherein Justice Ong held as follows:

> In the first place, I refer to the fundamental principle enunciated in *Nusserwanjee Pestonjee v. Meer Mynoodeen Khan Wulled Meer Subroodeen Khan Bahadoor* [1855] 6 Moo. I.A. 134, 155 by the Judicial Committee of the Privy Council:
>
> > Where jurisdiction is given to a court by an Act of Parliament, or by a Regulation in India (which has the same effect as an Act of Parliament), and such jurisdiction is only given upon certain specified terms contained in the Regulation itself, it is a universal principle that these terms must be complied with, in order to create and raise the jurisdiction, for if they be not complied with the jurisdiction does not arise
>
> > A reference to court in the matter of land acquisition is governed by the Land Acquisition Enactment (Cap. 140), and its jurisdiction to entertain the reference is a jurisdiction resting solely on that statute. The conditions prescribed by section 22 must be complied with before the Collector can make the reference and the court have jurisdiction to act on it ... In the next place, a reference to court postulates a valid award, that is to say, an award properly made in substantial conformity with the relevant provisions of the Enactment, which is section 11.

[30] In view of the above legal proposition, the requirements stated in s. 14(1) and (2) of the Act are mandatory to be fulfilled in order to have a valid award – Form G. The mandatory requirements go to the jurisdiction of the court when the award is later referred to the court.

[31] There are ample Indian authorities which have decided on the issue that in the event the Land Administrator failed to state the apportionment in the award, this thereby renders the award invalid (see *Rabindra Kumar Babu v. SK Banerjee LNIND* [1959] Cal 119; *Land Acquisition Collector v. Gajpal Singh LNIND* [1980] Del 196; *State of West Bengal v. Asiatic Investment Limited LNIND* [2009] Cal 561; *M Siddiqi & Others v. Kolkata Metropolitan Development Authority & Others LNIND* [2014] Cal 2283)

[32] The Land Administrator's failure to state the apportionment in the impugned awards could not be overcome or rectified by the court because the reference proceeding based on such a defective award could not confer the court with jurisdiction.

[33] Counsel for the tenants (Nos. 9 to 27 of Table D), Tetuan Sharifuddin & Co, and counsel for the tenant The Store (No. 5 of Table D), Tetuan Tan Norizan & Associates, and counsel for the caveator, Baharin bin Ayob, Tetuan Hasnal & Partners (also supported by counsel for MINDEF) urge this court to invoke s. 44 of the Specific Relief Act 1950 to exercise the court's inherent jurisdiction. As elucidated earlier, the High Court's jurisdiction is confined to the 'terms of reference' in a land reference proceeding. A land reference court does not exercise the role of an appellate court, neither does it exercise a supervisory role, such as in a judicial review case. Those powers vested in the High Court pursuant to s. 44 of the Specific Relief Act 1950 do not apply in a land reference proceeding.

[34] A reference to the High Court under the Act can only be made by a Land Administrator via s. 36 or 38(5) of the Act. An interested person cannot file a land reference proceeding by himself, except as otherwise laid down in the Act – see s. 38(7) of the Act. The Act allows only the Land Administrator the right to refer an objection to the High Court. This proffers that the right to refer an objection to the court is not a right *in personam* accorded to an interested person as opposed to the right to file an ordinary writ or originating summons. An action *in personam* arises out of an obligation in law which has been violated, such as a breach of contract or commission of a tortious action or an assertion of a right in an action *in rem*. The remedies in s. 44 of the Specific Relief Act empower the court to order a remedy for the claimant and allow for the claimant be compensated for the wrong done to him in an action *in personam*.

[35] To fortify the proposition the nature of a land reference is not an action *in personam*, this court refers to s. 40D(3) of the Act, wherein it states that 'the decision of the court is final and there shall be no further appeal to a higher court on the matter', and read together with s. 49(1) of the Act which

A the last paragraph states 'provided that where the decision comprises an award of compensation there shall be no appeal therefrom'. Hence, an applicant is not accorded a right to appeal against the decision of the High Court after the High Court has scrutinised the compensation award made by the Land Administrator. There is no right to appeal because the decision of
B the High Court is in the nature of a reference, not in the nature of an appeal or supervision. Appeal is allowed only on point of law, not the compensation award which has been decided by the court.

[36] Section 47(3) of the Act states as follows:

> C Every such written decision or award **shall be deemed to be a decree** and the statement of the grounds of any such award a judgment within the meaning of the law for the time being in force relating to civil procedure.
>
> (emphasis added)

There would not be any necessity for the Legislature to explicitly accord the
D decision of a land reference proceeding of the High Court the binding force of law if the proceeding is no different from an action premised on a right *in personam*.

[37] In a land reference proceeding, the sole object of the High Court is to ensure the interested person is adequately compensated by the Land
E Administrator. A High Court Judge, assisted by two assessors, is to determine only the terms of reference which are in regard to whether the interested person has been adequately compensated. A land reference is not about a wrong that has been committed against the applicant or the remedy that avails to the applicant. The High Court is confined to the terms of
F reference which have been set down by the Act *via* s. 36(2) and 37(1) of the Act. In the event there is any breach in the due process during the enquiry, or non-compliance of the procedural law of acquisition, the correct action to be taken is to challenge the award by seeking a judicial review against an administrative decision. In such circumstances, the remedy in s. 44 of the
G Specific Relief Act could avail to the claimant, but not to an applicant in a land reference proceeding.

[38] The scope of land reference proceedings is restricted by s. 44 of the Act which states:

> H (1) In every proceeding under this Part the scope of the inquiry shall be restricted to a consideration of the interests of the persons affected by the objection.

[39] The law confines the scope of a land reference court in that 'the inquiry shall be restricted to the consideration of the interests of the persons affected by the objection,' nothing more. Hence, it is not within the purview
I of jurisdiction or scope of a land reference court to rectify or correct an invalid or irregular award made by a Land Administrator. The Land Administrator is exercising not just a statutory duty under the Act, he/she

is also exercising a constitutional responsibility to ensure an aggrieved party in the acquisition is adequately compensated. A Land Administrator cannot take the proceeding and enquiry too lightly or merely rubber stamp an award of compensation based on valuation reports submitted by the government's valuer.

[40] In the event the Land Administrator is unable to make a decision which involves complicated questions of law or fact, it is the duty of the Land Administrator to act prudently and not to bulldoze over the process of inquiry and make an award which does not in any way indicate the quantum of compensation for each affected person or even whether such person is entitled to any compensation or not.

[41] In this instant case, the Land Administrator by way of an affidavit (encl. 258 – LR 94), the filing of the affidavit was objected by KCSB, explained two main reasons that prompted her to omit the apportionment of the parties' entitlement in the impugned awards. The first reason is that there was a dispute over the category of land use in the two scheduled lands. Those persons who claimed for the costs of the buildings in Lot 1876 would not be entitled to such costs in the event the category of land use is agriculture land. The Land Administrator voiced her concern and admitted that she was not in the position to determine the category of land use of the scheduled lands. The Land Administrator states as follows:

> Saya sesungguhnya menyatakan bahawa dalam menjalankan kuasa kehakiman-separa ("*quasi*-judicial") di bawah Akta Pengambilan Tanah 1960, saya sesungguhnya percaya Responden Pertama (referring to Pentadbiran Tanah, Johor Bahru) tidak mempunyai kelayakkan dan/atau kemahiran dan/atau bidangkuasa untuk memutuskan berkenaan isu kategori penggunaan tanah bagi Lot-Lot 139 dan 1876 tersebut.

[42] The second reason that prompted the Land Administrator to omit the apportionment is at the time of the enquiry, she was made to understand that there was a ferocious dispute between the chargee MBSB and KCSB (the chargor) over the legal issue(s) of the charges on the scheduled lands, and the dispute remained unresolved at the time the enquiry was carried out on 3 November 2016. The dispute was pending in the court at that material time.

[43] Despite her stated concerns, the Land Administrator still proceeded to determine the compensation award for the scheduled lands. The Land Administrator went ahead to issue Forms G and H despite facing those two hard questions in the enquiry. After having decided the compensation amounts, she invoked s. 29(1)(c) of the Act by applying to the Registrar of the court to deposit the compensation amount into court. Section 29 of the Act empowers the Land Administrator to deposit the compensation amount in court when 'there is a dispute as to the right or title of the person to receive the compensation, or as to the apportionment thereof' (see s. 29(1)(c) of the

A Act). The Land Administrator left the impugned awards as they were without dealing with the apportionment and without stating which party is or is not entitled to the compensation awards. As a result of the absence of information on the apportionment and the amount each of the parties is entitled or if they are entitled at all, all the Forms N lodged with the Land
B Administrator do not state any compensation amount and apportionment in which the applicants are said to be dissatisfied with. The applicants in all the references before this court do not know the amount with which they are not satisfied. The applicants merely make a bare statement that they are not satisfied with the compensation award and the apportionment.

C **[44]** The court and the assessors can only carry out their duties in a land reference proceeding where there is an amount which has been determined by the Land Administrator to enable the court and the assessors to decide whether the amount awarded is or is not adequate compensation. The amount of the compensation award decided by the Land Administrator shall
D be the reference point for the High Court to determine whether the applicant has been overcompensated, or adequately compensated or inadequately compensated.

[45] A land reference court is not a court of first instance to determine a compensation amount or apportionment for the first time. There must first
E be a compensation amount which has been determined by the Land Administrator, only then can a reference be made to the High Court for determination.

[46] In this instant case, the Land Administrator took a step which is wrong in law by making an award leaving out the apportionment for the
F compensation sum. This error committed by the Land Administrator is fortified if one considers the hypothetical question: What happens in the event no one lodges a Form N to object to the impugned award? Then who has the right to the compensation money? Does that mean the compensation award will be left in court perpetually?

G **[47]** The court is of the view that the Land Administrator cannot rely on an excuse that she was facing two hard questions to avoid making apportionment in the awards. The Land Administrator could have resorted to s. 36(2) of the Act. Section 36(2) states as follows:

H (2) The Land Administrator may, **at any time of his own motion** by application in **Form M** refer to the court for its determination any question as to:

(a) the true construction or validity or effect of any instrument;

(b) the person entitled to a right or interest in land;

I (c) the extent or nature of such right or interest;

(d) the apportionment of compensation for such right or interest;

(e) the persons to whom such compensation is payable;

(f) the costs of any enquiry under this Act and the persons by whom such costs shall be borne.

[48] In so far as the first hard question, ie, the category of land use is concerned, the Land Administrator could have by her own motion lodged a Form M to refer the question to the High Court relying on s. 36(2)(a) of the Act for the court to determine and construe the title deed whether its category of land use is agriculture or building. With regard to the second hard question, that is the MBSB's interest versus KCSB's interest over the charges and the interest and entitlement of the other parties, the Land Administrator could have relied on ss. 36(2)(b), or (c), or (d), or (e), or combination of either two or more of the provisions to refer the questions to the court for determination.

[49] The law provides that the Land Administrator is entitled at any time on his own motion apply to the court for determination of any question as laid down in s. 36(2) of the Act. "At any time" would, in the opinion of this court, mean before the Land Administrator decides the compensation amount or even after the Land Administrator has determined the compensation amount. This construction is in harmony with s. 29(1) of the Act. Section 29(1) of the Act states:

(1) After a notice of award in Form H, Form LC or Form R has been served in the manner prescribed by section 53 upon all interested persons the Land Administrator shall, as soon as may be, make payment of each amount awarded to the person entitled thereto unless:

(a) there shall be no person competent to receive such payment;

(b) the person entitled thereto does not consent to receive the amount awarded; or

(c) there is a dispute as to the right or title of the person to receive the compensation, or as to the apportionment thereof.

(2) In the cases referred to in paragraph (1)(a), (b) and (c) the Land Administrator shall apply *ex parte* to the Registrar of the court in chambers, supported by affidavit, for an order to deposit the amount awarded into court and, notwithstanding anything to the contrary in the law for the time being in force relating to civil procedure, the Registrar shall have power to make such order.

[50] The words 'to deposit the amount awarded into court' advances the situation that the Land Administrator has made a decision and awarded the compensation amount. This is fortified by the fact that Form H has been served. The Land Administrator who after having made the award, does not know who to pay to when a dispute arises as to the right or title of the person to receive the compensation, or as to the apportionment thereof, may deposit the amount to court. The facts of this instant case fall squarely into the situation as envisaged by s. 29(1)(c) and (2) of the Act.

[51] Section 36(2) of the Act is the provision that comes to the rescue when the Land Administrator is faced with a deadlock situation as envisaged by s. 29(1)(c) of the Act. The Land Administrator is entitled at any time on his own motion to apply to the court in Form M for its determination of the question faced in s. 29(1)(c) of the Act which corresponds with s. 36(2)(b), (c) and/or (d) of the Act.

[52] Counsel for JC submitted that since it is this High Court who must ultimately decide the two hard questions, therefore, the court in the land reference proceedings has the jurisdiction to determine the objections raised in the Forms N filed by the parties.

[53] This court is of the considered view there is a distinction whether these questions are posed to this court through the filing of Form M and whether they only arise after Form N followed with Form O are filed. For a proceeding commenced with filing of Form M, the end result would be the court will answer the question and return the matter to the Land Administrator for further action. The Land Administrator may then insert into the award what the court has directed or ruled. The Land Administrator would then have a complete and valid award in Form G. This is different from a case where the hard questions arise in a proceeding commenced with filing of Form N. As explained earlier, any Forms filed which are premised on an invalid Form G will be invalid too. These hard questions could not be legitimately raised through a Form N or filing of an application for determination, because the court would not have jurisdiction to deal with them in the land reference proceeding in the first place due to the defective Form G.

[54] Counsel for the chargee MBSB submits that what the Land Administrator did was correct in law. The thrust of the counsel's argument is that no apportionment could be made for the compensation money between a chargor and chargee. Counsel's argument is premised on the Federal Court decision *Chung Khiaw Bank Ltd v. The Government of the State of Sabah & Ors* [1994] 2 CLJ 475; [1994] 2 MLJ 193.

[55] The reasoning of the apex court in *Chung Khiaw Bank Ltd*, at p. 479 (CLJ); p. 199 (MLJ), is essentially captured in the following paragraph as below:

> ... In the circumstances of the instant case, the government valuer's formula, which is of general application, cannot apply to a charged property since a charge is indivisible and the security is attached to the whole property. It follows that until the property is discharged, the interest of the appellant is on the whole property and any proceeds of the sale of the property will attach to the said property. Secondly, based on the above consideration and bearing in mind that the area acquired by the state government was a portion of the said property and that the total

compensation sum for the acquired portion was very much less than the outstanding loan due to the appellant. It would be inequitable to make any apportionment of the compensation sum as between the parties.

[56] In *Chung Khiaw Bank Ltd* the High Court relying on the method formulated by the government valuer, ie, based on value of the quantum of interest a party loses by reason of the acquisition, apportioned the compensation award between the chargor and chargee. The apex court did not agree with the High Court that apportionment should be made because of the interest of the chargee is attached to the whole land based on the indivisible title of interest, and that it is inequitable to apportion the compensation when the compensation amount is lesser than the sum owing to a chargee by the chargor.

[57] This court fully comprehends the *ratio* of the apex court, but the principle of that case is confined to its peculiar facts and concerns only the relationship between a chargor and chargee.

[58] The facts in the apex court case and the instant case are distinguishable. In *Chung Khiaw Bank Ltd* the High Court and the apex court had to deal with the compensation award involving only two parties, namely the chargor and chargee. Whereas, in the present case, there are many other parties involved, including caveators and tenants. In so far as the tenants are concerned, they are entitled to claim their losses of the premises and other ancillary losses. They are entitled to know what their portions of entitlement are or whether they are entitled to the compensation award at all. The decision of the apex court is not a *carte blanche* for the Land Administrator to omit the apportionment of an award merely because a chargor and a chargee were present among the parties.

[59] MBSB's interest was not finally determined at the material time of enquiry held on 3 November 2016. The Land Administrator said she could not apportion the compensation award because she was uncertain of the chargee's interest. What the Land Administrator could have done at that juncture was she could have waited until the final disposal of the matter by the court or on her own motion lodge Form M to refer the matter to the High Court for determination.

[60] Further, in the event the outstanding amount owing to the chargee is greater than the compensation amount, the Land Administrator need not apportion the compensation award. This proposition is common sense. In the present case, the Land Administrator was not aware of the actual sum owing by the chargor to the chargee at the material time of enquiry. Further, there were other parties' interests as well to be considered, not just the interest of the chargor alone.

[61] This court has scrutinised the issues and arguments raised in the written submissions of all the parties, especially the submission from counsel for JC; this court is neither satisfied nor convinced it has the jurisdiction to hear the land reference proceedings before it.

[62] In summary, the decision of the court is, firstly, the Land Administrator is duty-bound under statute to state the area of the scheduled land, the compensation value of the scheduled land and the value of any other properties affected by the acquisition, and the apportionment of the compensation award (in a situation which requires him/her to do so) pursuant to s. 14(1) and (2) of the Act. If the Land Administrator fails to do so, the repercussion is that the award (Form G) will be defective and invalid. Hence, the impugned awards are invalid in law for non-compliance with s. 14(1) and (2) of the Act. Secondly, flowing from an invalid award, any subsequent lodgement of Forms shall be invalid. An invalid Form N which is premised on an invalid Form G and/or H will not confer the High Court with the jurisdiction despite the fact that a Form O has been filed by the Land Administrator. Thirdly, the High Court in a land reference has no power to grant ancillary relief. Fourthly, a land reference court can determine and make orders related only to the 'terms of reference' referred thereto in a valid Form N or those questions raised by a Land Administrator pursuant to s. 36(2)(a) to (f) of the Act. Sixthly, a land reference proceeding is not an action *in personam*. An aggrieved party cannot file a land reference proceeding by himself. A land reference proceeding can only be brought by a Land Administrator. Seventhly, every identified interested person has a constitutional right to expect that he would be adequately compensated. Whether he is adequately compensated or not is to be decided on case to case basis in accordance with the Act. Eighthly, the Land Administrator is not only carrying out a statutory duty but also a constitutional duty to ensure the aggrieved party is adequately compensated. Lastly, the Land Administrator is entitled to at any time to refer and should refer questions to the court for determination when he is faced with the questions as envisaged in s. 36(2)(a) to (f) of the Act.

Conclusion

[63] Based on the reasoning and analysis in the foregoing part of this judgment, this court answers the question of law in the negative. This court orders that the three land reference proceedings, namely, LR-94, LR-102 and LR-96, together with the 28 others land reference proceedings which were filed objecting to the same impugned awards be struck out for want of jurisdiction of this court.

[64] This court further orders costs of RM1,000 (subject to allocator fees) to be paid by the Pentadbir Tanah, Johor Bahru to all the applicants, including the other land reference proceedings mentioned in Tables C and D, except the applicant in LR-96, within 14 days from this order.

[65] Lastly, this court wishes to record its appreciation to all counsel involved in these land reference proceedings for their detailed written submissions and research.